UNIFORM LEGISLATION IN THE UNITED STATES

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Notwithstanding the advantages connected with the principle of local self-government, which finds its expression in the federal system, modern developments of commercial and social life have brought about obvious and grave evils. It is a commonplace that the form of government devised by the great men who drafted the Constitution of the United States was brought into being under conditions more dissimilar from those of today, so far as they related to trade and commerce, than those conditions themselves were to the period when Rome governed the world. A population less by a million or more than that which now crowds Manhattan Island and the shores of New York Bay, scattered along the Atlantic coast, with its outposts just beginning to cross the Alleghenies, constituted the people of the United States. They were for the most part of pure English descent, and the common law of the mother country was administered substantially without other change than the differences of a new country made necessary. The industries were mainly agricultural and maritime, and the disputed questions of state or federal jurisdiction, while of momentous importance, were indefinitely fewer than those which now command public attention. None the less, so well marked are the political principles upon which the federal constitution is based, so wisely had they been evolved in the minds of the early statesmen from the precedents afforded by the history of human government, that with comparatively few amendments they have been adapted to the needs of the states during all the memorable years from 1789 till the present day. The political systems of other nations that were contemporary with our own in 1789 have all passed away or been so modified that we may truthfully say that, while we are the youngest of the great nations, our government as it stands today with its checks and balances, its reserved rights of the states and delegated powers of the general government, is the oldest now existing.

The time has come, however, when acknowledged evils, not ap-

parent when our population was small and the mastery of the hidden forces of nature had not revolutionized habits of life, are pressing for solution. The apparent simplicity of conferring on the general government the full jurisdiction over matters of interstate commerce allowed by the letter of the constitution or which by interpretation can be brought under the spirit of its language, has led a large and constantly increasing number of political thinkers to advocate further amendments that will give jurisdiction in matters of more intimate local concern.

Needless to say, unless this tendency towards the magnifying of federal jurisdiction and minimizing of the states shall be checked, we shall find ourselves under an imperial system which, whatever be its advantages, is essentially bad and fraught with danger to American ideals. There would seem to be but one antidote for the evil of exaggerated federal jurisdiction and that rests in the principle of uniform legislation by the various states. Wholesale and many branches of retail business have long since ceased to operate within a single state, and if it cannot find relief from the divergent laws of the different states on the same subjects, it will demand and will receive the boon from a changed constitution.

Competent publicists have expressed the opinion that the machinery of the federal government is already clogged and overweighted. There are dangers to be apprehended from the further reducing of state jurisdiction which need not be enlarged upon. No citizen, proud of the success of our representative republican system, can witness its decay without sorrow and foreboding. The constitutional checks and limitations are the best if not the only safeguard of the rights of a minority and the surest defense against sectional legislation. If then it be possible to preserve them and yet permit the widest expansion of commercial activity, there can be no doubt that it is a patriotic duty to do so.

It is believed that the history and accomplishment of the Conference of Commissioners on Uniform State Laws will show the possibility of attaining substantial uniformity in many matters of commercial and social importance. The conference reflects in many ways the sentiment of the legal profession and, though a distinct body, is itself an outcome of the efforts of the American Bar Association to fulfill one of its declared objects, "to promote the administration of justice and uniformity of legislation throughout the Union."

Following the appointment of a committee composed of one member from each state by the association in 1889 to meet in convention and examine the laws of the different states, especially those relating to marriage and divorce, descent and distribution of property, acknowledgment of deeds and execution and probate of wills, with a view to bringing about uniformity on these subjects, the legislature of New York in 1890 authorized the governor to appoint three commissioners by the name and style of "Commissioners for the Promotion of Uniformity of Legislation in the United States" to ascertain the best means to effect an assimilation and uniformity in the laws of the states, and to consider whether it would be practicable to invite other states to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several states.

Year by year since 1890 such a convention has been held. The commissioners have organized themselves into a permanent body with a constitution and by-laws, executive officers, and standing and special committees. All of the states, territories and possessions of the United States are represented, more than one-half by virtue of legislative authority and the others by the exercise of gubernatorial discretion. In 1913 there were present commissioners, representing thirty-five states and territories. The conference meets annually some days before the sessions of the American Bar Association and at the same place. Its members are almost entirely lawyers, and their work is customarily but not necessarily submitted for approval to the Bar Association through its committee on uniform state laws.

The method adopted for drafting the more lengthy acts offers every possible safeguard against hasty and slipshod legislation. The subject having been decided to be appropriate for uniform legislation by the conference, is referred to the proper committee with authority to employ an expert. The expert in due time submits his draft to the committee which, after careful revision, reports to the conference a tentative draft of an act. In some cases acts have been printed and reprinted with annotations and explanations several times, have been in all cases submitted to lawyers, professors, business men and corporation officials. Public meetings are held by the committees, and finally the draft act is approved and sent to the different states, through their respective commissioners, for adoption.

The most successful of the efforts to attain uniformity has been in the case of the negotiable instruments act. It was drafted by John J. Crawford, Esq., of the New York bar, an expert on the subject. He had for a basis of his work the English bills of exchange act of 1882, which had been the law of Great Britain and her various colonies for many years. In preparing this act the English draftsman merely sought to put in the form of a statute the law as found in the decisions of the courts, and where there was a conflict of decision to adopt the doctrine supported by the weight of authority. The act, after repeated redrafts, was finally offered for approval in 1896, and has since been adopted without much amendment in forty-six states, territories and the District of Columbia.

The Warehouse Receipts Act

This act was drafted by Prof. Samuel Williston, of Harvard Law School, and Barry Mohun, Esq., of Washington, D. C., an author of a work on warehouse receipts. This bill has met with acceptance in thirty states. The commercial importance of warehouse receipts and bills of lading has developed a systematic theory in regard to them, which had its origin in the custom of merchants. As stated by Professor Williston:

> The fundamental doctrines of the mercantile theory are the complete assignability of the document if it runs to order, and the complete identification of the document with the goods it represents. Both these doctrines are contrary to the ordinary common law principles.

The passage of this act makes goods in the hands of a warehouseman impossible of attachment, without the surrender of the receipt, or its being impounded by the court. Thus full negotiability is given to warehouse receipts, excepting that title does not pass where they fall into the hands of a thief. In view of the enormous values of all sorts of merchandise held in storage, the effect of adding these documents of title to the bankable paper of the country can be appreciated at a glance.

The Uniform Bills of Lading Act

This was finally adopted by the conference after five separate drafts had been printed and revised. Bills of lading are divided

into two classes, a non-negotiable or "straight" bill, in which it is stated that the goods are consigned or directed to a specified person, and a negotiable or "order" bill, in which it is stated that the goods are consigned or destined to the order of any person named on the bill. By this act the order bill becomes completely negotiable.

As was said by the chairman of the committee, Francis B. James, Esq.:

> By this act an "order" bill of lading is recognized as part of the currency of commerce, a piece of commercial paper, passing freely from hand to hand, so that a man may discharge his debt with a bill of lading as well as with cash, either in his relations to his banker or any other creditor.

and he quotes from Logan McPherson:[1]

> It is not only a certificate that merchandise is in transit, but a first lien upon that merchandise, in a way a title to ownership, and as fulfilling this function, negotiable. For example, a grain dealer bringing a car load of wheat at the western field may, and in the vast majority of cases does, deposit the bill of lading covering that car in a bank as security for a loan to its value. If that car goes through to a port where it is sold for export, the loan may not be paid and the bill of lading lifted until the grain is transferred from the car to the vessel. There is a similar procedure in the case of other commodities, with bills of lading covering raw material to the factory and finished product from the factory. The order bill of lading thus contributes to that fluidity of the circulating medium, that celerity in the transfer of merchandise, which are striking achievements and essential requirements of current civilization.

This act has already passed in eleven states and has been well received by the commercial community.

The Transfer of Stock Act

The scheme of this act is to deal with certificates of stock so that they become the sole and exclusive representative of shares of stock in the corporations which issue them, so that they may pass freely from hand to hand, and a bona fide purchaser for value of a duly endorsed certificate becomes at once the owner of the certificate and of the shares represented thereby. The essence of the act centers in section 8, which provides:

[1] *Railroad Freight Rates*, etc., p. 190, quoted 16 Pa. Bar Assocn. Rept. 114.

Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.

This act after four years of preparation was approved by the conference in 1909 and has thus far been passed in nine states.

The Uniform Sales Act

The last of the more important commercial acts prepared by the conference. This act, also drafted by Professor Williston, is based upon the English sale of goods act drafted by M. D. Chalmers, an eminent English judge and jurist, who also drafted the bills of exchange act upon which the negotiable instruments bill is based. Judge Chalmers says of his act:[2]

Sale is a consensual contract and the act does not seek to prevent the parties from making any bargain they please. Its object is to lay down clear rules for the cases where the parties have either formed no intention or failed to express it.

As has been shown by Professor Williston, it is an advantage for any subject to be reduced to simple rules, and is convenient both to business men and to lawyers. This reason has induced England to pass various commercial acts, and in our country the reason is accentuated by our divergent jurisdictions. The mercantile view has been adopted in this act as relates to documents of title, giving them the fullest negotiability rather than the restricted view of the common law. The act has passed in eleven states.

The five acts, known as the American uniform commercial acts, are the most important outcome of the deliberations of the conference, and their acceptance by so many states shows the commission was not mistaken in selecting them for uniform codification. They have besides, with the exception of the stock transfer act, all been approved by the National Civic Federation.

[2] Preface to sale of goods act, 1893.

The Execution and Probate of Wills

Acts have been prepared upon this subject which when adopted will remove dangers that have not infrequently resulted in defeating the obvious will of the testator leaving property in different jurisdictions. Nine states have adopted the act relating to the execution of wills without the state.

Of equal importance with the commercial acts, though the object in view is much more difficult of attainment, is uniformity in certain matters of social importance. The scandal arising from the divergent laws of the different states, especially on the subject of jurisdiction, brought about the enactment of legislation in Pennsylvania which resulted in a congress being held in Washington in 1906 to correct some of the evils and anomalies of the existing divorce statutes. This congress met at the invitation of the governor of Pennsylvania and its expenses were paid from the treasury of that state. It drafted the uniform divorce law.

Uniform Divorce Law

This would correct the more obvious evils of the existing system and especially the extraordinary situation presented in an occasional case where a divorce is held valid in one state and invalid in another, with the result that a man may be legally married to two wives and have two sets of legitimate children because neither jurisdiction recognizes the validity of the other's judicial decree. The uniform divorce act prepared by the congress was considered by the conference of commissioners as being so excellent a measure, especially as it embodied the principles of divorce reform enunciated by the American Bar Association, that the act was accepted by the conference and approved as one of its own. This act does not attempt to regulate details of procedure, and such details with but few exceptions are left to the different states to formulate as they may deem proper. The principal exceptions are those relating to open public hearings and the publicity of records of divorce cases which the states are urged to embody in their laws. No attempt has been made to bring about uniformity of causes for divorce, it being felt that each state could regulate this matter in accordance with the prevailing public sentiment; but on the general subject of the jurisdiction of the courts to grant decrees of absolute divorce and the recognition

or effect to be given in one state to decrees of divorce obtained in another, careful legislation is recommended.

The sections relating to jurisdiction require a bona fide residence of one of the parties in the state for two years before the bringing of an action, except in case of adultery and bigamy when the cause of action arose in the state, and a like term of residence of one of the parties when either has become a resident of the state since the cause of action arose, providing that in the latter case the cause of action must have been recognized in the state in which such party resided at the time the cause of action arose as a ground for the same relief asked for in the action.

Migratory divorces are cut up by the root and the scandal arising therefrom will be practically eliminated by the provision that "if any inhabitant of this state should go into another state, territory or county in order to obtain a decree of divorce for a cause which occurred while the parties resided in this state, or for a cause which is not a ground for divorce under the laws of this state, a decree so obtained shall be of no force or effect in this state." This is the law of Massachusetts.

When jurisdiction has been obtained in accordance with the provision of the act and a decree has been entered, then it is provided that "full faith and credit shall be given to a decree of annulment of marriage or divorce obtained in another state when the jurisdiction of the court was obtained in the manner and in substantial conformity to the conditions prescribed by this act."

It is not claimed by the advocates of the uniform divorce act that its passage will materially diminish the number of divorces, but it will remove much of the scandal connected with them and is the best that can be done so long as public sentiment favors absolute divorce under any circumstances. It is a mosaic made up of existing provisions of the laws of many of the states and has been adopted in principle in New Jersey, Delaware, Wisconsin, and is substantially the law of Illinois. There has been a mistaken impression that it contains notional provisions, the outcome of merely theoretical knowledge on the part of its draftsmen, but in point of fact not one of its provisions has been untried.

The Uniform Marriage Act

This act leaves to each of the states that adopts it the selection of the persons who may celebrate the marriage ceremony. Its central thought is that no marriage may be validly contracted until a license has been issued, and then that the parties must declare in the presence of at least two competent witnesses other than the officiating person that they take each other for husband and wife. A period of five days must elapse between the application and the granting of the license. Marriage according to the rules of special religious societies is provided for. Common law marriages will be abolished by all of the states that adopt this act. They are no longer valid in a dozen or more of the states. This act too is based upon the existing laws of various states. Its draftsmen have sought to avoid the mistake of making marriage difficult and at the same time have sought to surround it with every practicable safeguard.

The Evasion of Marriage Act

This provides that marriage celebrated between citizens or a citizen of the state in any other jurisdiction contrary to the laws of the domicile shall be null and void. The passage of this act will be necessary in order to prevent the evasion of the laws of any state passing the marriage act, as otherwise citizens could go into other jurisdictions, marry and return to their domicile, thus avoiding its requirements.

The Wife Desertion Act

This act was inspired by the law of the District of Columbia which has been in successful operation for several years. It provides for the trial and sentence of wife deserters and parents who leave their children in destitute circumstances, with provisions that make it possible for the court to suspend sentence if the offender is willing to work outside of jail, and if not he is compelled to work in jail and his earnings are turned over for the support of the deserted wife or children, as the case may be. The substantial provisions of this act have met with general acceptance.

A Uniform Child Labor Act

Embodying the best principles that study of the subject has educed. It has been adopted by the conference and has been used as a model in various of the states.

Workmen's Compensation

This difficult subject has also been carefully studied and a tentative act covering the best learning on the subject has been drafted.

This sketch of the work of the Conference of Commissioners on Uniform State Laws can give but an imperfect idea of its activities. It is absolutely non-political, sufficiently conservative, and, considering that the bills recommended by it have no greater sanction than their own excellence, their general acceptance has been very encouraging. It is believed that this plan of obtaining uniformity has passed far beyond the experimental stage. As the legislatures of the different states get a better realization of it, they will appropriate adequate sums for its support. At present all of the commissioners work without compensation, and a large proportion of them pay the not inconsiderable expenses attendant upon their presence at the meetings at long distances from their homes. Many of the states, however, not only pay the expenses of their commissioners, but a proportion of the expenses of the conference itself. These contributions, together with the aid of the American Bar Association, have enabled it to meet the very moderate requirements of expert fees, printing bills and other necessary demands.

At a time when the critical spirit of inquiry is searching the very foundations of our civilization, and the boldest schemes for attaining Utopian conditions find fanatical advocates, a sober spirit should be cultivated especially among those who are charged with the responsibility of legislating for the community. It is necessary, of course, that legislation should meet changing conditions, but the general principles upon which such legislation should be drafted have been settled by the experience of many centuries, and those who would seek to prove them to be based on false principles should have the burden cast upon them at every stage of argument. Men are not made moral by legislation nor by secular education. Every measure of change or reform should be submitted as far as possible to the passionless examination of experts. It is believed that the work of the Conference of Commissioners on Uniform State Laws shows the value of such methods.